

REMARKS/ARGUMENTS

Claims 21, 23-31, 35-42 and 44 are active.

Claim 21 is amended to define the saccharide as xylose (the elected specie) at a concentration range of 0.1 to 5% as described in the specification on page 13, last paragraph and page 18, lines 4-6.

Claims 26-30 and 42 are withdrawn due to the restriction but have been retained for the Examiner's consideration upon expanding the scope of the elected species and for rejoining the non-elected method claim.

The remaining claim changes are to align with the amended Claim 21.

No new matter is added.

The claims in this application are based on compositions and methods to provide non-permanent shaping of keratinous fibers, such as, hair that combined a film forming compound and a saccharide, defined in the claims as xylose.

Starting at page 3 of the Official Action, the Examiner has rejected Claims 21-23, 31-32, 38-41 and 44 as lacking novelty or as obvious in view of US 4,900,545 to Wisotzki. This patent is acknowledged and briefly discussed on page 3, line 8-10 of the present application. Wisotzki describes PVP as a suitable film forming agent for a hair composition and suggest the possibility of including mono or disaccharides. The Examiner recognizes that Wisotzki does not specifically describe the type of monosaccharides described in Claim 1 but suggest that would have been simply obvious as Wisotzki does suggest the inclusion of monosaccharides.

Starting at page 6 of the Official Action, the Examiner rejected Claims 21-25, 31-32, 35-41 and 44 as obvious in view of US2002/0031483 to Beck. Once again, Beck teaches a hair treatment composition but for a different purpose compared to the present application and describe the combination of film forming polymers such as polyquaternium-16 and various saccharides.

Starting at page 8 of the Official Action, the Examiner has rejected to Claims 21-25, 31-32, 35-44 as obvious in view of Wisotzki, Beck and BASF technical description of certain polyquaternary polymers including the elected polyquaternium-46. The Examiner recognized that Wisotzki does not describe the specific film forming polymer that we have elected, i.e., polyquaternium-46 but as Beck suggests the possibility of other polyquaternium film forming polymers and the BASF technical publication list that as a known polymer the Examiner suggests that it would have been obvious to use the specific elected species in a composition useful for hair.

With respect to the rejections under 35 USC 102(b), the cited art fails to specifically teach the combination of film-forming agent and xylose in a specific range defined in the claims. Indeed, the mere listing of possibilities where one has to choose variables from different laundry lists, as is the case with Wisotzki, to arrive at the composition claimed is an improper standard for establishing that the claims lack novelty. In particular, Wisotzki does not describe the arrangement of the specific film former and xylose defined in the claims with any specificity to select the form and contents of that composition such that they are sufficiently limited or well delineated to place the claimed composition in the possession of the public, a requirement under US law.

Further and regarding the obviousness positions the Examiner has raised, the invention is not obvious to try where vague prior art, as the case is with Beck and Wisotzki, does not guide one of skill in the art towards a particular solution. A finding of obviousness would not be obtained where what was obvious to try was to explore a new area of technology or general approach that seemed to be a promising field of experimentation where both Wisotzki and Beck simply provide general guidance as to the particular form of the claimed invention or how to achieve it. While Wisotzki and Beck at least suggest the possibility of combining film forming agents in saccharides they teach very different compositions compared to what is claimed with

only general disclosure as to what could be included and, as such, there is simply nothing in these citations that suggest to the problem underlying the present invention, that is, to provide non-permanent shaping of hair.

Further and germane to the contention of obviousness, as described on page 8 of the application, the inventors unexpectedly discovered that in addition to retaining moisture, a certain class of sugars (e.g., xylose as defined in the claims) imparted a durable non-permanent shape or durable retention of a non-permanent shape or style to hair. In the specification there are presented a number of comparative tests to access curl efficiency or similar where example 1 on page 20 uses xylance showing that improved curl efficiency is a function of concentration. Similar results were shown in example 2 using neutralized polymer and example 3 shows comparative data with and without xylance demonstrating the importance of that monosaccharide. Examples 4-11 combine PVP/VA with and with out xylose in a concentration of 1%, the results of which demonstrate the combination had better effects compared to only the film formers. Again, it is already noted on page 8 of the application, that the combination of components in the claimed composition and its effect was unexpected.

This further applies to the obviousness-type double patenting rejection citing US patent no. 7,459,150 as the inclusion of xylose in an amount of 0.1 to 5% is not obvious particularly in view of the comparative data presented in the specification.

Reconsideration and withdrawal of all rejections is requested.

Applicants respectfully submit that the above-identified application is now in condition for allowance, and early notice thereof is earnestly solicited.

Respectfully Submitted,

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